

113TH CONGRESS  
1ST SESSION

# H. R. 2400

To amend the Organic Foods Production Act of 1990 to require recordkeeping and authorize investigations and enforcement actions for violations of such Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2013

Mrs. CAPPES (for herself, Mr. HANNA, Mr. DEFAZIO, and Mr. FARR) introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

To amend the Organic Foods Production Act of 1990 to require recordkeeping and authorize investigations and enforcement actions for violations of such Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Organic Standards  
5       Protection Act”.

1   **SEC. 2. RECORDKEEPING, INVESTIGATIONS, AND ENFORCE-**  
2                         **MENT.**

3                 The Organic Foods Production Act of 1990 is amend-  
4         ed by inserting after section 2120 (7 U.S.C. 6519) the  
5         following:

6   **“SEC. 2120A. RECORDKEEPING, INVESTIGATIONS, AND EN-**

7                         **FORCEMENT.**

8         “(a) RECORDKEEPING.—

9                 “(1) IN GENERAL.—Except as otherwise pro-  
10         vided in this title, all persons, including producers,  
11         handlers, and certifying agents, required to report  
12         information to the Secretary under this title shall  
13         maintain, and make available to the Secretary on  
14         the request of the Secretary, all contracts, agree-  
15         ments, receipts, and other records associated with  
16         the organic certification program established by the  
17         Secretary under this title.

18         “(2) DURATION OF RECORDKEEPING REQUIRE-  
19         MENT.—A record covered by paragraph (1) shall be  
20         maintained—

21                 “(A) by a person covered by this title, ex-  
22                 cept for a certifying agent, for a period of 5  
23                 years beginning on the date of the creation of  
24                 the record; and

1               “(B) by a certifying agent, for a period of  
2               10 years beginning on the date of the creation  
3               of the record.

4               “(b) CONFIDENTIALITY.—

5               “(1) IN GENERAL.—Subject to paragraph (2),  
6               and except as provided in section 2107(a)(9) and as  
7               otherwise directed by the Secretary or the Attorney  
8               General for enforcement purposes, no officer, em-  
9               ployee, or agent of the United States shall make  
10               available to the public information, statistics, or doc-  
11               uments obtained from or made available by any per-  
12               son under this title, other than in a manner that en-  
13               sures that confidentiality is preserved regarding the  
14               identity of persons, including parties to a contract,  
15               and proprietary business information.

16               “(2) VIOLATORS AND NATURE OF ACTIONS.—  
17               The Secretary may release the name of the violator  
18               and the nature of the actions triggering an order or  
19               revocation under subsection (e).

20               “(c) INVESTIGATION.—

21               “(1) IN GENERAL.—The Secretary may take  
22               such investigative actions as the Secretary considers  
23               to be necessary to carry out this title—

1               “(A) to verify the accuracy of any information  
2               reported or made available under this title;  
3               and

4               “(B) to determine, with regard to actions,  
5               practices, or information required under this  
6               title, whether a person covered by this title has  
7               committed, or will commit, a violation of any  
8               provision of this title, including an order or reg-  
9               ulation promulgated by the Secretary.

10              “(2) INVESTIGATIVE POWERS.—The Secretary  
11              may administer oaths and affirmations, subpoena  
12              witnesses, compel attendance of witnesses, take evi-  
13              dence, and require the production of any records re-  
14              quired to be maintained under subsection (a) or sec-  
15              tion 2112(d) or 2116(c) that are relevant to the in-  
16              vestigation.

17              “(d) UNLAWFUL ACT.—It shall be unlawful and a  
18              violation of this title for any person covered by this title—

19               “(1) to fail or refuse to provide, or delay the  
20              timely provision of, accurate information required by  
21              the Secretary under this section;

22               “(2) to violate—

23               “(A) an order of the Secretary;

24               “(B) a revocation of the organic certifi-  
25              cation of a producer or handler; or

1               “(C) a revocation of the accreditation of a  
2               certifying agent; or

3               “(3) to sell, or attempt to sell, a product that  
4               is represented as being organically produced under  
5               this title (including an order or regulation promul-  
6               gated under this title) if in fact the product has  
7               been produced or handled by an operation that is  
8               not yet a certified organic producer or handler under  
9               this title.

10              “(e) ENFORCEMENT.—

11              “(1) ORDER.—

12              “(A) IN GENERAL.—The Secretary may  
13               issue an order to stop the sale of an agricul-  
14               tural product that is labeled or otherwise rep-  
15               resented as being organically produced in cases  
16               of suspected fraudulent or otherwise unlawful  
17               acts as described in subsection (d) that are will-  
18               ful, noncorrectable, or the subject of a com-  
19               bined noncompliance and adverse action until  
20               the product can be verified—

21              “(i) as meeting the national and State  
22               standards for organic production and han-  
23               dling as provided in sections 2105 through  
24               2114;

1                     “(ii) as having been produced or han-  
2                     dled without the use of a prohibited sub-  
3                     stance listed under section 2118; and

4                     “(iii) as being produced and handled  
5                     by a certified organic operation.

6                     “(B) AFFIRMATIVE DEFENSE TO STOP  
7                     SALE ORDER.—

8                     “(i) IN GENERAL.—If a producer or  
9                     handler has a valid organic certification  
10                    from the Department of Agriculture, the  
11                    burden shall shift to the Secretary to prove  
12                    fraud or unlawful activity that is willful,  
13                    noncorrectable, or the subject of a com-  
14                    bined noncompliance and adverse action  
15                    before a stop sale order under subpara-  
16                    graph (A) may be implemented.

17                     “(ii) INFORMATION.—

18                     “(I) IN GENERAL.—The producer  
19                     or handler shall comply with any re-  
20                     quests of the Secretary for documents  
21                     and other information not later than  
22                     30 days after a request is made.

23                     “(II) NONCOMPLIANCE.—If the  
24                     producer or handler fails to comply  
25                     within the period described in sub-

1                   clause (I), the Secretary may issue a  
2                   stop sale order.

3                   **“(C) APPEAL OF STOP SALE ORDER.—**

4                   “(i) IN GENERAL.—If the Secretary  
5                   proves fraud or unlawful activity that is  
6                   willful, noncorrectable, or the subject of a  
7                   combined noncompliance and adverse ac-  
8                   tion, the determination may be appealed  
9                   through an expedited administrative appeal  
10                  process.

11                  “(ii) DEADLINE.—The expedited ap-  
12                  peal process shall be completed not later  
13                  than 30 days after the date of the issuance  
14                  of the stop sale order.

15                  “(iii) STAY.—Any stop sale order  
16                  shall be stayed pending the 30 day-expe-  
17                  dited appeal under this subparagraph.

18                  **“(2) CERTIFICATION OR ACCREDITATION.—**  
19                  After notice and opportunity for an administrative  
20                  appeal under section 2121, if a violation described in  
21                  subparagraph (A)(ii) is determined to have occurred  
22                  and is an unlawful act under subsection (d), the Sec-  
23                  retary shall revoke the organic certification of the  
24                  producer or handler, or the accreditation of the cer-  
25                  tifying agent.

1               “(3) VIOLATION OF ORDER OR REVOCATION.—

2     A person who violates an order to stop the sale of  
3     a product as an organically produced product under  
4     paragraph (1), or a revocation of certification or ac-  
5     creditation under paragraph (2), shall be subject to  
6     1 or more of the penalties provided under sub-  
7     sections (a) and (b) of section 2120.

8               “(f) APPEAL.—

9               “(1) IN GENERAL.—An order under subsection  
10    (e)(1), or a revocation of certification or accredita-  
11    tion under subsection (e)(2)(B), shall be final and  
12    conclusive unless the affected person files an appeal  
13    of the order—

14               “(A) first, to the administrative appeals  
15    process established under section 2121(a); and

16               “(B) after a final decision of the Secretary,  
17    if the affected person so elects, to a United  
18    States district court as provided in section  
19    2121(b) not later than 30 days after the date  
20    of the determination under subparagraph (A).

21               “(2) STANDARD.—An order under subsection  
22    (e)(1)(A), or a revocation of certification or accredi-  
23    tation under subsection (e)(2), shall be set aside if  
24    the order, or the revocation of certification or ac-

1 creditation, fails to comply with section 706 of title  
2 5, United States Code.

3 “(g) NONCOMPLIANCE.—

4 “(1) IN GENERAL.—If a person covered by this  
5 title fails to obey an order, or a revocation of certifi-  
6 cation or accreditation, described in subsection (f)(2)  
7 after the order or revocation has become final and  
8 conclusive or after the appropriate United States  
9 district court has entered a final judgment in favor  
10 of the Secretary, the United States may apply to the  
11 appropriate United States district court for enforce-  
12 ment of the order, or the revocation of certification  
13 or accreditation.

14 “(2) ENFORCEMENT.—If the court determines  
15 that the order or revocation was lawfully made and  
16 duly served and that the person violated the order  
17 or revocation, the court shall enforce the order or  
18 revocation.

19 “(3) CIVIL PENALTY.—If the court finds that  
20 the person violated the order or revocation, the per-  
21 son shall be subject to a civil penalty of not more  
22 than \$10,000 for each offense.”.

